

# State of South Dakota

EIGHTY-THIRD SESSION  
LEGISLATIVE ASSEMBLY, 2008

400P0737

## HOUSE BILL NO. 1320

Introduced by: The Committee on State Affairs at the request of the Office of the Governor

1 FOR AN ACT ENTITLED, An Act to provide tax incentives for certain wind energy facilities  
2 and energy transmission equipment.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 10-35 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Terms as used in sections 1 to 7 of this Act, inclusive, mean:

7 (1) "Collector system," all property used or constructed to interconnect individual wind  
8 turbines within a wind farm into a common project, including step-up transformers,  
9 electrical collection equipment, collector substation transformers, and  
10 communication systems;

11 (2) "Company," any person, corporation, limited liability company, association,  
12 company, partnership, political subdivision, rural electric cooperative, or any group  
13 or combination acting as a unit;

14 (3) "Nameplate capacity," the number of kilowatts a wind farm can produce, as assigned  
15 to the power units in the wind farm by the manufacturer and determined by the



1           secretary;

2       (4)    "Wind farm," all real or personal property used or constructed for the purpose of  
3           producing electricity for commercial purposes utilizing the wind as an energy source  
4           and with a nameplate capacity of at least five thousand kilowatts. The term includes  
5           the collector system;

6       (5)    "Transmission line," an electric transmission line and associated facilities, not  
7           including the collector system, with a design of one hundred fifteen kilovolts or  
8           more.

9       Section 2. That chapter 10-35 be amended by adding thereto a NEW SECTION to read as  
10   follows:

11       Any company owning or holding under lease, or otherwise, real or personal property used,  
12   or intended for use, as a wind farm shall pay the alternative annual taxes provided in sections  
13   3 and 4 of this Act. The alternative taxes imposed by sections 3 and 4 of this Act are in lieu of  
14   all taxes levied by the state, counties, municipalities, school districts, or other political  
15   subdivisions of the state on the personal and real property of the company which is used or  
16   intended for use as a wind farm, but are not in lieu of the retail sales and service tax imposed  
17   by chapter 10-45, the use tax imposed by chapter 10-46, or any other tax.

18       Section 3. That chapter 10-35 be amended by adding thereto a NEW SECTION to read as  
19   follows:

20       Any company owning or holding under lease, or otherwise, real or personal property used,  
21   or intended for use, as a wind farm shall pay an annual tax equal to three dollars multiplied by  
22   the nameplate capacity of the wind farm. The tax shall be imposed beginning the first calendar  
23   year the wind farm generates gross receipts. The tax shall be paid annually to the secretary the  
24   first day of February of the following year. The tax for the first calendar year shall be prorated

1 based upon the percentage of the calendar year remaining after the company generates gross  
2 receipts. Except as otherwise provided in this Act, the provisions of chapter 10-59 apply to the  
3 administration of the tax.

4 Section 4. That chapter 10-35 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Any company owning or holding under lease, or otherwise, real or personal property used,  
7 or intended for use, as a wind farm shall pay an annual tax of two percent of the gross receipts  
8 of the wind farm. For purposes of this section, the gross receipts of the wind farm is its  
9 production of electricity in kilowatts multiplied by the average annual industrial price of  
10 electricity from an energy-only provider in South Dakota, as published by the Energy  
11 Information Administration as of January 1, 2008, and determined by the secretary. The owner  
12 of a wind farm subject to tax under this section shall file a report with the secretary detailing the  
13 amount of electricity in kilowatt-hours that was produced by the wind farm for the previous  
14 calendar year. The secretary shall prescribe the form of the report. The tax for the gross receipts  
15 generated in a calendar year shall become due and be payable to the secretary on the first day  
16 of February of the following year. Except as otherwise provided in this Act, the provisions of  
17 chapter 10-59 apply to the administration of the tax.

18 Section 5. That chapter 10-35 be amended by adding thereto a NEW SECTION to read as  
19 follows:

20 The secretary shall deposit the tax imposed by sections 3 and 4 of this Act into the wind  
21 energy tax fund. There is created in the state treasury the wind energy tax fund.

22 Section 6. That chapter 10-35 be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 The secretary shall distribute all of the tax deposited in the wind energy tax fund pursuant

1 to section 3 of this Act and ten percent of the tax deposited in the wind energy tax fund pursuant  
2 to section 4 of this Act to the county treasurer where the wind farm is located. If a wind farm  
3 is located in more than one county, each county shall receive the same percentage of the tax as  
4 the percentage of wind towers in the wind farm located in the county. Upon receipt of the taxes,  
5 the county auditor shall apportion the tax between all taxing jurisdictions where a wind tower  
6 is located. The tax shall be apportioned in the same manner as agricultural real property taxes  
7 would have been apportioned between the taxing jurisdictions. The secretary shall distribute the  
8 money to the counties on or before the first day of May.

9 Section 7. That chapter 10-35 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 Any company requiring transmission lines in South Dakota for a new wind farm or a new  
12 power generation facility as described in § 10-35-1.3, is eligible for a partial rebate of the tax  
13 paid under section 4 of this Act. The company shall apply for the rebate on forms prescribed by  
14 the secretary. The total amount of tax rebated shall be no more than fifty percent of the cost of  
15 the transmission lines in South Dakota.

16 The maximum rebate any company may receive in one year is ninety percent of the tax paid  
17 under section 4 of this Act for the first five years and fifty percent of the tax paid under section  
18 4 of this Act for the next five years. No wind farm may receive a rebate under this section after  
19 this ten year period.

20 The secretary shall rebate the tax from the wind energy tax fund by the first day of June. Any  
21 revenue in the wind energy tax fund after the rebates are paid shall be deposited in the property  
22 tax reduction fund.

23 Section 8. That § 10-4-36 be amended to read as follows:

24 10-4-36. ~~HH~~ For wind energy properties with less than five thousand kilowatts of nameplate

1 capacity, all real property used or constructed for the purpose of producing electricity for  
2 commercial purposes that utilizes the wind as an energy source is classified for tax purposes as  
3 wind energy property and shall be assessed and taxed in the same manner as other real property  
4 and shall be locally assessed by the county director of equalization pursuant to § 10-3-16. For  
5 the purposes of §§ 10-4-36 to 10-4-38, inclusive, real property includes the base, foundation,  
6 tower, and substations. Real property does not include the wind turbine or blades attached  
7 thereto.

8 Section 9. That § 10-4-37 be amended to read as follows:

9 10-4-37. Any wind energy property of a commercial wind power production facility with  
10 less than five thousand kilowatts of nameplate capacity shall be assessed under the provisions  
11 of this chapter.